

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CHINLEY JEAN,

Petitioner,

v.

1:16-cv-596-WSD

**WARDEN OR MAJOR OF
ATLANTA CITY DETENTION
CENTER / DHS,**

Respondent.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Catherine M. Salinas’s Final Report and Recommendation [4] (“R&R”). The R&R recommends the Court deny Petitioner Chinley Jean’s (“Petitioner”) petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (“Petition”).

I. BACKGROUND

In mid-January, 2016, Petitioner was released by the Federal Bureau of Prisons into the custody of the Department of Homeland Security. On February 25, 2016, Petitioner filed his Petition, contending he is entitled to a writ of habeas corpus because he is a “legal resident” of the United States and “probable cause ha[s] not been established” for his continued detention. (Pet. at 3).

On March 3, 2016, the Magistrate Judge issued her R&R. The Magistrate Judge noted that Petitioner's plea agreement, which he signed and initialed, states: "The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future." United States v. Jean, No. 6:14-CR-92-ACC (M.D. Fla. July 18, 2014) (Doc. 35 at 12-13). Petitioner's sentencing memorandum acknowledged that he "will be deported after he serves his sentence in this case." Id. (Doc. 47 at 2). The Magistrate Judge determined Petitioner has not demonstrated he is in custody in violation of the Constitution or laws or treaties of the United States, and recommends this action be dismissed. Petitioner did not file any objections to the R&R.

On May 4, 2016, Petitioner filed his "Unopposed Motion to Change Venue and to Waive Appearance" [6]. The caption and substance of the motion—which seeks the "Immigration Court to please grant him a change of venue"—indicates Petitioner intended to file this document with the Executive Office for Immigration Review.

II. ANALYSIS

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). No party objects to the R&R, and the Court thus conducts a plain error review of the record. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

B. Discussion

Petitioner's plea agreement, which he signed and initialed each page of, states: "The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future." United States v. Jean, No. 6:14-CR-92-ACC (M.D. Fla. July 18, 2014) (Doc. 35 at 12-13). Petitioner's sentencing memorandum acknowledged that he "will be deported after he serves his sentence in this case." Id. (Doc. 47 at 2). The Magistrate Judge determined Petitioner has not demonstrated he is "in custody in violation of the Constitution or laws or treaties of the United States," as required under 28 U.S.C. § 2241(c)(3). (R&R at 2). The Magistrate Judge thus

recommends this action be dismissed. The Court finds no plain error in these findings and recommendation, and this action is dismissed.¹ See Slay, 714 F.2d at 1095.

III. CONCLUSION


For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Catherine M. Salinas's Final Report and Recommendation [4] is **ADOPTED**.

IT IS FURTHER ORDERED that Petitioner's "Unopposed Motion to Change Venue and to Waive Appearance" [6] is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that this action is **DISMISSED**.

SO ORDERED this 23rd day of August, 2016.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

¹ Because it appears Petitioner filed his "Unopposed Motion to Change Venue and to Waive Appearance" in this Court in error, Petitioner's motion is denied as moot.